APPENDIX

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 9th day of October, 1959.

The petition of Geraldine DeFoe for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Arlington County on the 15th day of April, 1959, in a certain proceeding then therein depending, wherein Isidore Suchman and others were plaintiffs, and the petitioner was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court.

A Copy,

Teste:

H. G. TURNER
Clerk

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 30th day of November, 1959.

GERALDINE DEFOE, *Plaintiff in error.*

against

ISIDORE SUCHMAN, et al., *Defendants in error.*

Upon a Petition to Rehear

On mature consideration of the petition of Geraldine DeFoe, plaintiff in error, to set aside the judgment ren-

dered herein, on the 9th day of October, 1959, and grant a rehearing thereof, the prayer of the said petition is denied.

A copy, teste:

H. G. TURNER
Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

AT LAW No. 6966

ISIDORE SUCHMAN, et al., *Plaintiffs*

v.

GERALDINE DEFOE, *Defendant*

Order

THIS CAUSE, having been removed from the County Court of Arlington County, came on the 7th day of April, 1959, to be heard before a jury duly selected, sworn and impanelled composed of the following named persons, to-wit: Lewis H. Bean, Eustice H. Waller, Jr., W. George Goold, Samuel Friedman, J. Walter England, Burton Kephart and Grier Sherrill, upon the summons for unlawful detainer filed by the plaintiffs, and responsive pleadings thereto; upon the Counter Claim filed by the defendant, and responsive pleadings thereto; and upon the evidence introduced in support of the said pleadings of the parties.

Whereupon, at the conclusion of all of the evidence, out of the presence of the jury, the plaintiffs moved to strike the evidence of the defendant which she had offered both in defense of the unlawful detainer action and in support of her Counter Claim, and to enter a summary judgment for possession of the premises detained and damages for use and occupancy of the premises during the time the premises

were detained from the plaintiffs for the period July 1, 1957, to this date.

Upon Consideration Whereof, the Court being of the opinion that the defendant's evidence is insufficient in law, both as a defense to the unlawful detainer action and in support of the defendant's Counter Claim; that there is no material fact genuinely in dispute to be submitted to a jury for determination; that the plaintiffs, Isidore Suchman, Benjamin Duhl, Paul Gaier, and Sol Berger, are entitled to judgment for possession of the premises and rent accrued in the sum of One Thousand, Eight Hundred Dollars ($1,800.00) to the date that this action was instituted; but that the said plaintiffs are not entitled to recover in this proceeding rent which has accrued during the pendency of this suit in the amount of Six Hundred Seventy-five Dollars ($675.00), or damages for use and occupancy of the premises during said period; it is, therefore,

Adjudged and Ordered that the evidence offered by the defendant, both in defense of the unlawful detainer action and in support of the Counter Claim, be, and it hereby is, stricken.

Thereupon, the jury returned to the jury box and was discharged by the Court.

It Is Further Ordered that the plaintiffs, Isidore Suchman, Benjamin Duhl, Paul Gaier, and Sol Berger, recover and have judgment against the defendant, Geraldine DeFoe, for possession of premises 2145 North Pierce Street, Apartment 4, Arlington County, Virginia.

It Is Further Ordered that the plaintiffs, Isidore Suchman, Benjamin Duhl, Paul Gaier, and Sol Berger, recover and have judgment against the defendant, Geraldine DeFoe, in the sum of One Thousand Eight Hundred Dollars ($1,800.00) for rent accrued from July 1, 1957, to and including the month of October, 1958, and Court costs.

It Is Further Ordered that the Counter Claim filed by the defendant against the plaintiffs, Isidore Suchman, Benjamin Duhl, Paul Gaier, Sol Berger, and M. T. Broyhill & Sons Corporation, be, and it hereby is, dismissed with prejudice as to each of them.

It Is Further Ordered that the plaintiffs are not entitled to recover in this action any sum representing rent due or damages sustained for the use and occupancy of the subject premises by the defendant since this action was instituted to this date, which ruling is without prejudice to plaintiffs' right to institute separate actions for the recovery of such sums; to which ruling of the Court the plaintiffs excepted.

The defendant noted her exception to each of the foregoing rulings of the Court, and, having indicated her intention to apply to the Supreme Court of Appeals of Virginia for a Writ of Error and supersedeas from said judgment, she moved the Court to suspend the execution of the said judgment for a period of sixty (60) days from the entry of this Order for such purpose.

Upon Consideration Whereof, It Is Adjudged and Ordered that said motion be, and it hereby is, granted, provided that the defendant, or someone acting for her, shall, within ten (10) days from April 7, 1959, enter into a suspending bond before the Clerk of this Court in the penalty of Two Thousand Dollars ($2,000.00) with approved surety conditioned as the law directs.

/s/ Emery N. Hosmer
Judge

Entered this 15th day of April, 1959.

Seen:

Lewis and Tolbert, p.q.

By /s/ C. WYNNE TOLBERT
C. Wynne Tolbert

Seen and objected to:

/s/ GERALDINE DEFOE
Geraldine DeFoe, Defendant

Recorded in Common Law Order
Book 54, Page 380

A Copy, Teste;
H. BRUCE GREEN, *Clerk*.

By RACHEL H. WHITE
Deputy Clerk.

(Seal)

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 21st day of January, 1959.

The petition of M. T. Broyhill and Sons Corporation for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Arlington County on the 12th day of September, 1958, as amended October 13, 1958, in a certain action at law then therein depending, wherein the said petitioner was plaintiff and Geraldine DeFoe was defendant, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition, and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court.

A Copy,

Teste:

H. G. TURNER
Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

AT LAW No. 6351

M. T. BROYHILL & SONS CORPORATION, a corporation,
Plaintiff

v.

GERALDINE DEFOE, *Defendant*

Order

This cause came on again this day to be heard on the defendant's motion to set aside the judgment awarded plaintiff for possession of Apartment 4, 2145 North Pierce Street, and damages as therein provided; upon the briefs filed on behalf of each of the parties hereto; and argument of counsel.

Upon consideration whereof, the Court being of the opinion that the M. T. Broyhill & Sons Corporation is not entitled by plaintiff's Exhibit No. 2 introduced herein to institute and maintain this action of unlawful detainer, and that the motion to set aside the said judgment should therefore be granted; it is,

ADJUDGED AND ORDERED that the motion to set aside the judgment for possession of the premises, and damages, entered herein as of May 28, 1958, be, and it hereby is, granted, and said judgment is hereby set aside, to which ruling of the Court plaintiff by counsel duly excepted.

Thereupon, plaintiff, by counsel, moved to amend the unlawful detainer summons in this case by designating the plaintiff therein as Isidore Suchman, Benjamin Duhl, Paul Gaier and Sol Berger, by their agent, M. T. Broyhill & Sons Corporation.

Upon consideration whereof the said motion to amend is hereby denied, to which ruling plaintiff, by counsel, again excepted.

Whereupon, the plaintiff, by counsel, having indicated its intention to apply to the Supreme Court of Appeals of Virginia for a writ of error and supersedeas from said judgment, it moved the Court to suspend the execution of the said judgment for a period of 60 days from the entry of this order for such purpose.

It is Adjudged and Ordered that said motion be, and it hereby is, granted provided that the plaintiff, or someone acting for it, shall within 15 days from the entry of this order enter into a suspending bond before the Clerk of this Court in the sum of $300, with approved surety, conditioned as the law directs.

Walter T. McCarthy
Judge

Entered this 12th day of September, 1958.

Virginia:

In the Circuit Court of Arlington County

At Law No. 6351

M. T. Broyhill & Sons Corporation, a corporation,
Plaintiff

v.

Geraldine DeFoe, *Defendant*

Notice

TO: Geraldine DeFoe
Apartment 4
2145 N. Pierce Street
Arlington, Virginia

Please take notice that on Friday, September 12, 1958, at 1:30 o'clock p.m., E.D.S.T., or as soon thereafter as he may be heard, the undersigned, Counsel for plaintiff, will tender to the Court for entry an order nunc pro tunc, as requested in Court's memorandum dated September 4, 1958.

At the same time, plaintiff, by Counsel, will move the Court for the entry of an order, as requested in item 2 of the Court's memorandum, but providing among other things:

1. That it be awarded judgment for rent which has accrued and become payable on the subject apartment, beginning July 1, 1957, continuing to and including September 1, 1958, in the total sum of $1,687.50.

2. In the alternative, that it be awarded judgment for rent in the amount accrued and payable at the time judgment was originally awarded the plaintiff.

C. Wynne Tolbert
C. Wynne Tolbert
Counsel for Plaintiff

IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

At Law No. 6351

M. T. Broyhill & Sons Corporation, *Plaintiff*

v.

Geraldine DeFoe, *Defendant*

This Cause coming on again the 3rd day of October, 1958 upon a Motion of the defendant filed in writing herein on said day entitled, "Motion for the Release of Bonds" and said Motion having been argued by the defendant in person and the plaintiff, counsel,

And It Appearing to the Court that the matters contained in said Motion and also in a Motion heretofore made by the plaintiff in writing on September 11, 1958, should have been considered and ruled upon by the Court in its Order entered herein on September 12, 1958;

And The Court being of the opinion that the said Motion of the plaintiff filed as aforesaid on September 11, 1958 should be denied.

And The Court being of the further opinion that said Motion of the defendant for the release of the bonds mentioned in the Motion of the defendant filed herein on October 3, 1958, should be granted,

It Is Now Adjudged and Ordered that the order of this Court of September 12, 1958 is amended as follows:

It Is further ordered by the Court:

(1) That this Motion of the plaintiff of September 11, 1958 is denied. To this ruling, the plaintiff noted its exception.

(2) That the Motion of the defendant for the release of the bonds mentioned in her Motion of October 3rd is hereby granted.

(3) That, upon the expiration of the time in which an appeal or writ of error may be applied for, or if applied for and refused, or if granted, until final judgment is entered by the Supreme Court of Appeals, the Court shall enter proper order herein releasing the bonds mentioned in the aforesaid Motion of the said defendant and directing the Clerk to make proper entries upon the margin of said bonds and to refund such securities therefor to the defendant herein.

(4) The provision of said order of September 12, 1958 as to appeal and suspension shall apply to this order as if repeated herein.

Entered: October 13, 1958.

[Seal].

Walter T. McCarthy
Judge

A Copy, Teste;
H. Bruce Green, *Clerk*
By:
Virginia C. Long
Deputy Clerk

Notice

TO: Miss Geraldine DeFoe
Apartment 4
2145 North Pierce Street
Arlington, Virginia

The undersigned owners of the Fort Bennett Apartments, and their duly authorized agent, do hereby give notice that any right by which you claim to occupy premises known as Apartment 4, 2145 North Pierce Street, Arlington, Virginia, either by virtue of your original 1-year lease, or otherwise, will be terminated October 15, 1958, and unless you vacate the premises by that day, legal proceedings will be instituted to recover possession thereof.

THIS NOTICE is given in addition to all other notices heretofore given and all other proceedings heretofore instituted by any of the undersigned parties in order to recover possession of the above-described premises and shall not be considered a waiver of any of the said previous actions to gain possession of the premises made by any of the said parties.

DATED this 15th day of September, 1958.

ISIDORE SUCHMAN
Isidore Suchman, by Counsel

BENJAMIN DUHL
Benjamin Duhl, by Counsel

PAUL GAIER
Paul Gaier, by Counsel

SOL BERGER
Sol Berger, by Counsel

M. T. BROYHILL & SONS CORP.
M. T. Broyhill & Sons Corporation
Agent for the above owners, by
Counsel

LEWIS AND TOLBERT
2054 14th Street North
Arlington, Virginia
Attorneys for owners and agents

By C. WYNNE TOLBERT
C. Wynne Tolbert

VIRGINIA:

IN THE COUNTY COURT OF ARLINGTON COUNTY

ISIDORE SUCHMAN, BENJAMIN DUHL, PAUL GAIER, SOL BERGER, and M. T. BROYHILL & SONS CORPORATION, a corporation, *Plaintiffs*

v.

GERALDINE DEFOE, Apartment 4, 2145 North Pierce Street, Arlington, Virginia, *Defendant*

Affidavit for Unlawful Detainer

STATE OF NEW YORK
CITY
COUNTY OF NEW YORK } to-wit:

THIS DAY personally appeared before me, , a Notary Public in and for the City County and State aforesaid, Benjamin Duhl, who first being duly sworn made oath that he is a part-owner of the premises hereinafter described and is duly authorized to execute this affidavit on behalf of his co-owners, Isidore Suchman, Paul Gaier, and Sol Berger; that Geraldine DeFoe unlawfully detains and withholds possession of Apartment 4, 2145 North Pierce Street, Arlington, Virginia, and should be removed therefrom for the following reasons:

1. Said owners, through their duly authorized agent, M. T. Broyhill & Sons Corporation, caused notice to be

served upon Geraldine DeFoe on July 3, 1957, that she was in arrears in the payment of rent for the month of July, 1957, in the sum of $112.50 per month, due and payable on the 1st day of July, 1957, and that she would be required to pay the rent due on or before five (5) days from the service of the notice or surrender possession of the said premises; that the defendant failed to pay the said rent as provided in said notice and continues to this date to unlawfully detain and withhold possession of the premises from the plaintiffs, although she has not withheld possession of the premises for more than three (3) years before this date.

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FIFE SOUTHERN BUILDING
COURTHOUSE SQUARE
ARLINGTON, VIRGINIA

[Seal]

2. The said owners of the premises again, on December 30, 1957, through their said agent, M. T. Broyhill & Sons Corporation, to whom they have lawfully delegated the management of the said premises, caused notice to be served upon the said defendant that any right by which she claimed to occupy the premises would be terminated effective January 31, 1958, but notwithstanding the said notice, she failed and refused to surrender possession according to said notice and still retains and withholds possessionto this date, although she has not retained possession for more than three (3) years before this date.

3. That by notice duly served upon the defendant on May 15, 1958, the said owners, through their duly authorized agent, M. T. Broyhill & Sons Corporation, caused notice to be served upon the said defendant that any right by which she claimed to occupy said premises would be terminated effective June 15, 1958, and that said notice was in addition to and not to be considered a waiver of any pre-

vious notices or actions to gain possession of the premises, but notwithstanding the said notice, she failed and refused to surrender possession according to said notice and still retains and withholds possession to this date, although she has not retained possession for more than three (3) years before this date.

4. That by notice duly served upon the defendant on September 15, 1958, the said owners and their duly authorized agent, M. T. Broyhill & Sons Corporation, caused notice to be served upon the said defendant that any right by which she claimed to occupy said premises would be terminated effective October 15, 1958, and that said notice was in addition to and not to be considered a waiver of any of the said previous actions to gain possession of the premises made by any of the said parties.

5. The plaintiffs further contend that the defendant is not a member of the Armed Forces of the United States.

6. Plaintiffs further allege that the defendant is in arrears in the payment of rent on the said premises for each and every month beginning July 1, 1957, to the date of the execution of this affidavit, at the rate of $112.50 per month, totaling One Thousand, Eight Hundred Dollars ($1,800.00)

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THE SOUTHERN BUILDING
COURTHOUSE SQUARE
ARLINGTON, VIRGINIA

[Seal]

for the said period. Plaintiffs further claim additional damages for use and occupancy of the premises at the rate of $112.50 per month for each and every month hereafter until they gain possession of the premises.

WHEREFORE, the plaintiffs allege that they are entitled to possession of Apartment 4, 2145 North Pierce Street,

Arlington, by reason of each of the grounds hereinabove recited and they move the Court to enter judgment against the said defendant for possession and for the sum of One Thousand, Eight Hundred Dollars ($1,800), plus Court costs, plus an additional sum equal to the rental which shall hereafter accrue at the rate of $112.50 per month until possession is obtained from the defendant.

BENJAMIN DUHL,
Benjamin Duhl, Co-Owner

SUBSCRIBED AND SWORN To before me, a Notary Public in my city and State aforesaid, this 29th day of October, 1958.

FREDERICK TIPPMANN
Notary Public

My Commission Expires

FREDERICK TIPPMANN
Notary Public, State of NewYork
No. 03-3989025
Qualified in Bronx County
Commission Expires March 30, 1959

LAW OFFICES OF
LEWIS AND TOLBERT
THE SOUTHERN BUILDING
COURTHOUSE SQUARE
ARLINGTON, VIRGINIA

[Seal]

Form No. 101—Code 1919, Sec. 5445. No. 12609

THE COMMONWEALTH OF VIRGINIA

To the Sheriff of the County of Arlington, Greeting:

WE COMMAND YOU, in the name of the Commonwealth, that you summon Geraldine DeFoe to appear before our County Court for the County of Arlington, at the Court House thereof, on the 13th day of November, 1958, at 11:00 o'clock a.m. to answer the complaint of Isidore Suchman.

Benjamin Duhl, Paul Gaier, Sol Berger and M. T. Broyhill & Sons Corporation, a corporation that the said defendant is in possession and unlawfully withholds from the said plaintiff certain premises, to wit: Apartment 4, 2145 North Pierce Street, Arlington, Virginia. Plaintiffs claim damages for use and occupancy in the sum of $1,800.00 plus added damages from Nov. 1, 1958 at the rate of $112.50 per month and possession which said possession has not been so withheld for a period of more than three years next preceding the suing out of this summons. And have then there this writ.

Witness, H. Bruce Green, Clerk of our said Court, at the Court House, the 31st day of October, 1958, in the 183rd year of the Commonwealth.

H. Bruce Green, *Clerk.*
by: Freda S. Woodyard, *Deputy Clerk*
[A copy to be delivered to each defendant.]

IN THE CIRCUIT COURT OF ARLINGTON COUNTY, VIRGINIA

At Law No. 6966

Isidore Suchman, et al., *Plaintiffs*

v.

Geraldine DeFoe, *Defendant*

Memorandum

FROM: Walter T. McCarthy, *Judge*

TO: Oren L. Lewis, Esq., Counsel for Plaintiffs
Geraldine DeFoe, Defendant in person

The Court has considered the Motion for Summary Judgment filed in behalf of the plaintiffs.

The Court is of the opinion that the Motion should be denied for the following reasons:

(1) The defenses raised by the "Answer" are legal defenses and not factual.

(2) While the defense is called an "Answer" it is actually a Demurrer, a Motion to Strike, or a Motion to Quash.

(3) Whatever its proper designation, when and if it is held to be insufficient in law, the defendant will be given time to answer.

(4) M. T. Broyhill & Sons Corporation are not entitled to a judgment.

December 19, 1958.

WALTER T. McCARTHY
Judge